D.B. CIVIL SPECIAL APPEAL NO.194/2003
(Ajmer Vidyut Vitran Nigam Limited Vs. Pratap & Ors.)

DATE OF ORDER : 03.04.2006

HON'BLE MR. JUSTICE N.N.MATHUR
HON'BLE MR. JUSTICE MANAK MOHTA

Mr. Manoj Bhandari for the appellant.

We have heard learned counsel for the appellant and perused the impugned order dated 11.2.2003 passed by the learned Single Judge.

The appellant preferred an appeal against the order dated 18.07.2002 passed by the Commissioner, Workmen's Compensation, Bhilwara, whereby, the learned Commissioner granted compensation to the respondent-workman to the tune of Rs.148290/- along with interest of Rs.40650/- and 12% interest from the date of award till the date of payment. The appeal has been dismissed by the learned Single Judge on the ground that it was not accompanied by certificate of the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. The certificate of depositing the amount was produced later on. It reveals from the certificate that the amount was not deposited within a period of 60 days from the date of passing of the award. The appellant had also filed application under Section 5 of the Limitation Act for the condonation of delay in filing the appeal, more particularly

properly constituted appeal within limitation.

Having heard learned counsel for the appellant, we are of the view that the appeal deserves to be allowed. A proviso to Section 30 reads as follows:

> "Provided further that no appeal by an employer under Clause (e) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against."

A careful reading of the proviso and keeping in view the object of the proviso referred to above, we are of the view that the expression 'lie' cannot be given a narrow meaning to mean presented for the purpose of receiving or presenting, but should mean "to be entertained". We are fortified in our view by a Division Bench judgment of Orissa High Court in Oriental Insurance Co. Ltd. Vs. Gajindra Prusty and Another, reported in II (1996) ACC 430.

It is not in dispute that the entire amount has been deposited with the Workmen's Compensation Commissioner. There existed good reasons, which prevented the appellant from filing the appeal within limitation as well as in depositing the

amount. The appeal involves substantial question of law.

Considering all the facts and circumstances of the case and to secure the ends of justice, it is desirable that the delay in filing the appeal as well as depositing the amount is condoned. We are satisfied that their existed good reasons which prevented the appellant in presenting the appeal within limitation as well as in depositing the amount.

Consequently, the appeal is allowed. The order dated 11.2.2003 passed by the learned Single Judge is set aside. The application under Section 5 of the Limitation Act is allowed. The delay in filing the appeal as well as in depositing the amount is condoned.

Let the matter be placed before the learned Single Judge taking up such matters.

(MANAK MOHTA),J. **(N.N.MATHUR),J.**

msr